

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:09-CR-227-1-F

UNITED STATES OF AMERICA

v.

THOMAS RAY NICHOLS,  
Defendant.

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**ORDER**

This matter again is before the court on Thomas Ray Nichols' *pro se* motions [DE-138] ("Motion to Correct Federal Court Record Pursuant to Fed. R. Crim. P. 36") and [DE-139] ("Motion to Stay all Proceedings Relating to the Enforcement of Forfeiture Order"), both filed on August 2, 2012. The Government has filed a Response [DE-140], and Nichols has written to the Clerk of Court seeking an update on his motions for fear they have been overlooked. *See* Letter [DE-141].

The history of this case, including the lengthy forfeiture proceedings, is well-documented and the court declines to relate it again. For purposes of the instant motion, however, Mr. Nichols is advised that the documents of record listed below demonstrate that his most recent requests for relief are based on his mis-recollection of the character of the \$1,760,400.00:

[DE-23] – Criminal Information filed August 56, 2009, containing a list of property subject to forfeiture, including . . . "(3) Approximately \$1,760,400.00 in U.S. currency";

[DE-38] – Plea Agreement filed October 5, 2009, signed by Nichols, his attorney and the Assistant United States Attorney, containing Nichols' agreement to forfeit assets specified in the Criminal Information, and the stipulation, that, "Pursuant to U.S.S.G. § 2B1.1(b)(1)(I), the Economic Loss Table, the loss was more than \$1,000,000 but less than \$2,500,000";

[DE-58] – Preliminary Order of Forfeiture filed January 22, 2010, listing among the items of property to be forfeited, "The gross proceeds of the defendants' illegal acts, in an

amount of approximately \$1,760,400.00 in US. Currency, an amount not currently in the possession of or its whereabouts known to the Government”;

[DE-59] – Judgment of Forfeiture, dated January 22, 2010, against THOMAS RAY NICHOLS AND CHARLES RAY HAWKS, JR., jointly and severally, in the amount of \$1,760,400”;

[DE-86] – Amended Motion for Forfeiture of Property for Preliminary Order of Forfeiture as to Substitute Assets, filed April 19, 2011, listing real and personal property and cash forfeitable up to the value of \$1,760,400.00.

[DE-88] – Preliminary Order of Forfeiture of Substitute Assets, filed April 27, 2011, including listed personal property “up to the value of \$1,760,400.00, said value to be determined by the net proceeds realized by the Government after the sale . . . of the substitute property and the disposition of any third party claims to the property. Any net proceeds from the sale or disposition of the substitute property that exceeds \$1,760,400.00 shall be returned to the Defendant”;

[DE-117] – Final Order of Forfeiture in Respect to Personal Property, filed November 30, 2011, related to [DE-88];

[DE-119] – Order Denying Nichols’ Motion for Reconsideration, filed December 12, 2011;

[DE-133] – Notice of Settlement Agreement as to third party claimant, Carolina Morales;

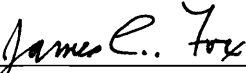
[DE-135] – Final Order of Forfeiture as to Real Property Substitute Assets, filed May 15, 2012, with regard to Carolina Morales.

Nichols simply is mistaken that the “\$1,760,400.00” figure is a typographical error referring to a sum of money in a bank account. It is “the *gross proceeds of the defendants’ illegal acts*,” which is a sum more than \$1,000,000.00 and less than \$2,500,000.00, to which Nichols agreed in his Memorandum of Plea Agreement.

Nichols' Motion to Correct [DE-138] and Motion to Stay [DE-139] are DENIED.

SO ORDERED.

This, the 4<sup>th</sup> day of September, 2012.

  
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JAMES C. FOX  
Senior United States District Judge